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SENATE

REPORT
99-115

PROVIDING FOR THE USE AND DISTRIBUTION OF FUNDS AWARDED IN DOCKET 363 TO THE MDEWAKANTON AND WAHPEKUTE EASTERN OR MISSISSIPPI SIOUX BEFORE THE UNITED STATES COURT OF CLAIMS AND CLAIMS COURT

JULY 26 (legislative day, JULY 16), 1985.—Ordered to be printed

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Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1349]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1349) to provide for the use and distribution of funds awarded in Docket 363 to the Mdewakanton and Wahpekute Eastern or Mississippi Sioux before the United States Court of Claims and Claims Court, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

SEC. 1. (a). That notwithstanding any other law, except as provided in subsection (b) of this section, the funds for awards to the Mdewakanton and Wahpekute Sioux appropriated on January 30, 1981 ($800,000), on October 15, 1982 ($591,058), and one-half of the funds appropriated on March 2, 1981 ($7,500), all in docket numbered 363 before the United States Court of Claims, and the funds appropriated on August 1, 1983 ($3,468,246.48), in docket numbered 363 before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be divided by the Secretary of the Interior (hereinafter the "Secretary") as follows:

(1) Santee Sioux Tribe of Nebraska, 58.69 percent.

(2) Flandreau Santee Sioux Tribe, 15.84 percent.

(3) Prairie Island Sioux, Lower Sioux, and Shakopee Mdewakanton Sioux Communities of Minnesota to be divided on the basis of the respective members of each of the three communities, born on or prior to and living on the date of this Act, 25.47 percent.

(b). To the share of the Santee Sioux Tribe of Nebraska in subsection (a) of this section shall be added $172,365.20, and to the share of the Flandreau Santee Sioux Tribe $135,244.32, both sums appropriated on August 1, 1983, in docket number 363, less attorney fees and litigation expenses, and including all interest and investment income accrued.

SEC. 2. The share of the Santee Sioux Tribe of Nebraska shall be used and distributed as follows:

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(a). Eighty per centum of the funds apportioned shall be used and distributed as follows:

(1). The Secretary shall make a per capita distribution of $300 to each tribal member born on or prior to and living on the date of this Act, except that those members at least sixty years of age on that date shall be paid $900.

(2). The balance of the eighty per centum portion of the funds shall be invested by the Secretary for a Tribal Investment Fund designed to yield periodic dividend payments to all tribal members born on or prior to and living on the dates such dividend payments are declared. Only the interest and investment income accrued shall be available for dividend payments. The amounts and payment dates shall be determined by the tribal governing body with the approval of the Secretary, and the first of such payments shall not be made earlier than five years from the date of the per capita payment in paragraph (1) of this subsection.

(b)(1). Twenty per centum of the funds shall be utilized for tribal social and economic development purposes, and for the establishment of a tribal burial fund; $200,000 of such program funds shall be invested by the Secretary for the purpose of establishing a burial fund utilizing the interest and investment income accrued. Such funds shall not be available for burial services until two years after the date of initial investment. The tribal governing body, with the approval of the Secretary, shall develop criteria for the implementation of tribal burial services.

(2). The balance of the twenty per centum portion shall be invested by the Secretary and the interest and investment income accrued shall be utilized by the tribal governing body on a budgetary basis, with the approval of the Secretary, for programs designed to enhance the social and economic development of the Tribe. None of the twenty per centum programming portion of the funds shall be available for per capita or dividend payments.

SEC. 3. The share of the Flandreau Santee Sioux Tribe shall be used and distributed as follows:

(a). Twenty-five per centum of the funds shall be distributed in the form of per capita payments to each tribal member born on or prior to and living on the date of the enactment of this Act, except that those members at least sixty years of age as of that date shall be paid twice the amount of other per capita recipients.

(b). Seventy-five per centum of the funds (which includes funds previously advanced to the tribal governing body, shall be used by the tribal governing body on a budgetary basis, with approval of the Secretary, for programs designed to enhance the social and economic development of the Tribe. None of the seventy five per centum programming portion of the funds shall be available for per capita payments.

SEC. 4. The share of the Prairie Island Sioux Community shall be used and distributed as follows:

(a). Eighty per centum of the funds shall be invested by the Secretary for a Tribal Investment Fund designed to yield periodic dividend payments to all tribal members born on or prior to and living on the dates such dividend payments are declared. Only the interest and investment income accrued shall be available for dividend payments. The amounts and payment dates shall be determined by the tribal governing body with the approval of the Secretary.

(b). Twenty per centum of the funds shall be utilized by the tribal governing body on a budgetary basis, with the approval of the Secretary, for programs designed to enhance the social and economic development of the Tribe. None of the twenty per centum programming portion of the funds shall be available for per capita or dividend payments.

SEC. 5. The state of the Lower Sioux Indian Community shall be used and distributed as follows:

(a). Eighty per centum of the funds apportioned shall be used and distributed as follows:

(1). The Secretary shall make a per capita distribution of $300 to each tribal member born on or prior to and living on the date of the enactment of this Act;

(2). One year from the date that the per capita payments in paragraph (1) of this subsection are made, an additional per capita payment of $300 shall be made to each tribal member who is at least sixty years of age living on such date.

(3). The balance of the eighty per centum portion of the funds shall be invested by the Secretary for a Tribal Investment Fund designed to yield periodic dividend payments to all tribal members born on or prior to and living on the dates such dividend payments are declared. Only the interest and investment income accrued shall be available for dividend payments. The amounts payment dates shall be determined by the tribal governing body with the approval of the Secretary, and the first of such payments shall not be made earlier than five years from the date of the per capita payment in paragraph (1) of this subsection.

(b). Twenty per centum of the funds shal be invested by the Secretary and the interest and investment income accrued shall be utilized by the tribal governing body on a budgetary basis, with the approval of the Secretary, for programs designed to enhance the social and economic development of the Tribe. None of the twenty percent programming portion of the funds shall be available for per capita or dividend payments.

SEC. 6. The share of the Shakopee Mdewakanton Sioux Community shall be used and distributed as follows:

(a). Eighty per centum of the funds shall be invested by the Secretary for a Tribal Investment Fund designed to yield periodic dividend payments to all tribal members born on or prior to and living on the dates such dividend payments are declared. Only the interest and investment income accrued thereon shall be available for dividend payments. The amounts and payment dates shall be determined by the tribal governing body with the approval of the Secretary.

(b). Twenty per centum of the funds shall be invested by the Secretary and the interest and investment income accrued shall be utilized by the tribal governing body on a budgetary basis, with the approval of the Secretary, for programs designed to enhance the social and economic development of the tribe. None of the twenty per centum programming portion of the funds shall be available for per capita or dividend payments.

GENERAL PROVISION

SEC. 7(a). No person shall receive benefit payments as a member of more than one of the tribes under this Act. An individual who is a member of more than one of the tribes under this Act must designate the tribe from which he or she will receive per capita or dividend payments prior to receiving a per capita or dividend payment under this Act.

(b). The per capita shares or dividend payments of living, competent adults shall be paid directly to them. The shares or payments of deceased individuals, legal incompetents and minors, shall be determined and distributed under regulations prescribed by the Secretary pursuant to the Act of October 19, 1973 (87 Stat. 466), as amended (96 Stat. 2512; 25 U.S.C. 1401 et seq.).

SEC. 8. Per capita and dividend payment distributions made pursuant to this Act shall be subject to the provisions of section 7 of the Act of October 19, 1973 (87 Stat. 466), as amended, (96 Stat. 2515; 25 U.S.C. 1407).

PURPOSE

The purpose of S. 1349 is to provide for the use and distribution of funds awarded the Mdewakanton and Wahpekute Eastern or Mississippi Sioux in docket 363 by the Court of Claims in compromise settlements. Congress has appropriated funds to satisfy the awards.

The Secretary of the Interior did not submit a plan for the distribution of these awards within the time prescribed by the 1973 Indian Judgment Fund Act (87 Stat. 466), as amended (96 Stat. 2512, 25 U.S.C. 1401 *et seq.*), nor did he propose legislation for the distribution of the monies.

S. 1349 will provide for the timely distribution of monies awarded to the Mdewakanton and Wahpekute Sioux.

BACKGROUND

The Court of Claims awards to the Mdewakanton and Wahpekute Sioux in docket 363, subject of S. 1349, are compromise settlements as follows:

January 16, 1981 award of $300,000 in an accounting claim arising under the Mdewakanton Sioux Treaty of September 29, 1837, under which the Mdewakanton Sioux ceded lands in Wisconsin and Minnesota. Congress appropriated funds to satisfy the award on January 30, 1981.

January 30, 1981, award of $7,500, part of a larger award, in an accounting claim arising under the Treaty of July 15, 1830, by which the Eastern Sioux ceded lands in Iowa. Congress appropriated funds to satisfy the award on March 2, 1981.

September 24, 1982, award totaling $591,053 in accounting claims rising under the Treaty of August 5, 1851 and the Treaty of June 19, 1851. Congress appropriated the funds to satisfy the award on October 15, 1982.

July 23, 1983, award of $3,463,246.48, a part of a large settlement in docket 363, to the Mdewakanton and Wahpekute Sioux and an additional award of $172,363.20 to the Santee Sioux Tribe of Nebraska and an additional $135,244.32 to the Flandreau Santee Sioux of Nebraska and an additional $135,244.32 to the Flandreau Santee Sioux Tribe of South Dakota in claims arising under the Forfeiture Act and for non-Forfeiture Act claims. Congress appropriated funds to satisfy the awards on August 1, 1983.

The Santee Sioux Tribe, Flandreau Santee Sioux Tribe, Lower Sioux Indian Community, Prairie Island Community and Shakopee Mdewakanton Sioux Community are the successors to the historical Mdewakanton Sioux and include representatives of the Wahpekute Sioux. These tribes and communities are the full beneficiaries of the Mdewakanton and Wahpekute awards subject to S. 1349.

Due to disparity in enrollment criteria, all five successor groups held a conference on March 23, 1982, at the Bureau of Indian Affairs, Minneapolis Area Office. The inter-tribal assembly voted unanimously to accept an initial division based on the 1934-35 agency census, and for the three Minnesota organizations a further division of the Court of Claims awards, with the exception of the separate awards to the Flandreau Santee Sioux Tribe and the Santee Sioux Tribe, as follows:

58.69 per centum to the Santee Sioux Tribe of Nebraska;

15.84 per centum to the Flandreau Santee Sioux Tribe of South Dakota; and

25.47 per centum to the Lower Sioux, Prairie Island and Shakopee Mdewakanton Communities, to be divided based on their membership as of the date of this Act.

Each successor group has passed a resolution regarding the distribution of their share of the awards, and no objection has been raised to the above division of the awards totaling $4,866,804.48, plus interest, less attorneys fees and litigation expenses.

LEGISLATIVE HISTORY

S. 1349 was introduced by Senator Abdnor, for himself and Senator Pressler, on June 25 (legislative day, June 3), 1985, and referred

to the Select Committee on Indian Affairs, which held a hearing on the bill on July 17, 1985. S. 1349 was marked up and ordered reported out of the Select Committee on July 24, 1985.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on July 24, 1985, with a quorum present recommends by a unanimous vote that the Senate pass S. 1349, as amended.

SECTION-BY-SECTION ANALYSIS

Section 1.—Authorizes the distribution of awards by the U.S. Court of Claims in docket 363, and provides for the Secretary to divide the funds among the five groups on the basis of the 1934–35 census, with further division among the three Minnesota communities based on current membership, with the exception of the separate awards to the Flandreau Santee Sioux and the Santee Sioux Tribes.

Section 2.—Provides that the award to the Santee Sioux Tribe of Nebraska be distributed as follows:

(1) eighty per centum to be ulilized for per capita payments of $300 to each tribal member under sixty years of age and payments of $900 to those members at least sixty years of age. The balance of these monies to be invested in a tribal investment fund to yield periodic dividend payments to living tribal members.

(2) twenty per centum to the tribal governing body, to be held in trust and invested by the Secretary, for the purpose of tribal social and economic development purposes; $200,000 of these monies to be set aside and invested by the Secretary for the establishment of a burial fund.

Section 3.—Provides that the award to the Flandreau Santee Sioux Tribe be distributed as follows:

(1) twenty-five per centum to be utilized for per capita payments to all tribal members, with those members sixty years or older receiving twice the amount paid to other per capita recipients.

(2) seventy-five per centum to the tribal governing body to be used for programs designed to enhance the social and economic development of the Tribe and assures that monies prematurely advanced to the tribal governing body are included in the programming portion of the Tribe's funds.

Section 4.—Provides that the share to Prairie Island Sioux Community be distributed as follows:

(1) eighty per centum to be invested in a tribal investment fund to yield periodic dividend payments to living tribal members.

(2) twenty per centum to the tribal governing body to be used for programs designed to enhance the social and economic development of the Tribe.

Section 5.—Provides that the share to the Lower Sioux Indian Community be distributed as follows:

(1) eighty per centum to be utilized for per capita payments of $300 per tribal member, with an additional $300 payment,

one year later, to all members sixty years of age or older. The balance of these monies to be invested in a tribal investment fund to yield periodic payments to living members.

(2) twenty per centum to the tribal governing body to be used for programs designed to enhance the social and economic development of the Tribe.

Section 6.—Provides that the share to the Shakopee Mdewakanton Sioux Community be distributed as follows:

(1) eighty per centum to be invested in a tribal investment fund to yield periodic dividend payments to living members.

(2) twenty per centum to the tribal governing body to be used for programs designed to enhance the social and economic development of the Tribe.

Section 7.—Provides that no person shall receive benefit payments as a member of more than one of the tribes under this Act, and directs that per capita and dividend payments to deceased individuals, legally incompetent individuals and minors be paid in accordance with the Indian Judgment Fund Distribution Act of 1973, as amended.

Section 8.—Provides that per capita and dividend payments shall be subject to the provisions of section 7 of the Indian Judgment Fund Distribution Act of 1973, as amended.

COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 1349, as amended, as provided by the Congressional Budget Office, is outlined below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 25, 1985.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1349, a bill to provide for the use and distribution of funds in docket 363 to the Mdewakanton and Wahpekute Eastern or Mississippi Sioux before the United States Court of Claims and Claims Court, as amended and ordered reported by the Senate Select Committee on Indian Affairs, July 24, 1985.

We expect that no additional costs to the federal government or to state or local governments would be incurred as the result of enactment of this legislation. The bill would specify the manner of the use and distribution of funds previously awarded to the tribes.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of the Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carry-

ing out the bill. The Committee believes that S. 1349, as amended, will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The Commtitee has not received any correspondence from the Executive Branch. However, the Department of Interior, through the Acting Director for Indian Services, Bureau of Indian Affairs, testified at the Committee's hearing on S. 1349, as set forth below:

STATEMENT OF HAZEL E. ELBERT, ACTING DIRECTOR OF INDIAN SERVICES, BUREAU OF INDIAN AFFAIRS, JULY 17, 1985

Mr. Chairman and Members of the Committee, I am pleased to be here today to present the views of the Department of the Interior on S. 1349, "To provide for the use and distribution of funds awarded in Docket 363 to the Mdewakanton and Wahpekute Eastern or Mississippi Sioux before the United States Court of Claims and Claims Court."

S. 1349 provides for the distribution of funds appropriated to pay judgment awarded to the Mdewakanton and Wahpekute Sioux Tribe, the Santee Sioux Tribe of Nebraska and the Flandreau Santee Sioux Tribe. The amounts for each tribe are shown on the attachment to this statement.

We support enactment of S. 1349. The tribes sharing in this award have each prepared appropriate plans for using their funds. However, two of the tribes have requested revisions in their plans. The Santee Sioux Tribe of Nebraska requested that the extra payments to be made to elderly members of the Tribe be made simultaneously with the per capita payments rather than one year after the per capita payments as presently in the bill. The Flandreau Santee Sioux Tribe requested that 75 percent of the funds be used for tribal social and economic development programs and 25 percent be distributed per capita with members 60 years and older receiving twice the amount of other per capita payments. The bill now provides that $500 be distributed per capita except for Flandreau Santee Sioux tribal members 60 years and older who would receive $1,000, while 20 percent of the funds and the balance of funds after per capita payments would be used for tribal programs.

We support these revisions and the necessary amendments are attached to this statement. Also, we have discussed some minor technical amendments with the staff of this Committee and are working with them to meet our concerns.

This concludes my prepared statement. I will be happy to answer any questions you may have.

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